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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Report of the Secretary-General

1. By its resolution 1998/53 of 17 April 1998, entitled "Impunity", the Commission on Human Rights noted the report submitted by Mr. Louis Joinet pursuant to Sub-Commission decision 1996/119 of 29 August 1996 1/ and the set of principles for the protection and promotion of human rights through action to combat impunity annexed to the report. The Commission requested the Secretary-General to invite States, international organizations and non-governmental organizations to provide him with their views and comments on the report and its annexed principles. It further requested the Secretary-General to invite States to provide information on any legislative, administrative or other steps they have taken to combat impunity and on remedies available to victims of human rights violations.

2. Accordingly, by a note verbale of 6 October 1998, addressed to member States, and to international and non-governmental organizations, respectively, the Secretary-General referred to the resolution of the Commission, and to the requests contained therein, and asked that relevant information and views be transmitted for inclusion in this report.

3. As of the date of preparation of this report, a total of nine (9) replies have been received, as follows: two replies from member States; three replies from United Nations agencies and programmes, and; four replies from non-governmental organizations.

1/ E/CN.4/Sub.2/1997/20/Rev.1.

4. In its reply of 3 December 1998, the Government of the Republic of Colombia outlined its approach to combating impunity for perpetrators of gross violations of human rights. The Government outlined a number of legal instruments, penal measures, procedural mechanisms, administrative and technical developments, and strategic initiatives introduced in Colombia to confront the phenomenon of impunity. It underscored its policy of the integration of domestic legal strategies with the international efforts at combating impunity, through linkages between national efforts and those of the Inter-American Commission on Human Rights and the United Nations Human Rights Committee. Key partnerships are said to involve victims' representatives, and the payment of compensation is framed in national law. Where necessary, proceedings in military tribunals are transferred to civilian courts. Particular attention is paid to the legal protection of women against violence, including both domestic and public violence, and a number of specific laws for these ends are catalogued in the Government's response.

5. By a letter dated 2 December 1998, the Government of Mexico drew attention to the work of the Mexican National Human Rights Commission which, it explained, was engaged in a full and permanent struggle against impunity for human rights violators. The Mexican Commission's programme to combat impunity has resulted, since 1990, in the processing of some 3,072 cases involving public officials. Between May 1997 and April 1998 alone, the Government pointed out, 160 such cases had been handled.

6. The International Rehabilitation Council for Torture Victims (IRCT) replied on 27 November 1998 with reference to the importance of reparations and rehabilitation for victims in the fight against impunity. The IRCT saw rehabilitation as a concrete manifestation of the crucial recognition that torture had taken place. It also viewed punishment of torturers as an important element of rehabilitation, and thus a medical imperative for victims. It saw the celebration of international commemorations, such as the International Day for Victims of Torture, as an important vehicle for moral rehabilitation.

7. Pax Romana, in its reply of 14 October 1998, made reference to information it had previously provided to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, regarding the impunity enjoyed by the members of the security forces of a member State alleged to be implicated in mass rapes numbering over 600 in total, and in the existence of recently discovered mass graves. Pax Romana asked that these cases be again reviewed by the relevant United Nations bodies.

8. The International Movement for Fraternal Union Among Races and Peoples (UFER) replied in a letter dated 15 October 1998, calling attention to its previous submissions and statements to the Sub-Commission and to the Commission on Human Rights, respectively, regarding violations in a number of specific member States, and appealing to concerned Governments and the United Nations High Commissioner for Human Rights to intervene as appropriate.

9. The Afro-Asian Peoples' Solidarity Organization (AAPSO), in its response dated 29 October 1998, described the phenomenon of impunity as a cross-cutting problem, affecting the political, economic, social, cultural and other spheres. The struggle against impunity should not be limited to the cases of

a few dictators, but rather all perpetrators and their accomplices and collaborators should be pursued and brought to justice before national and international tribunals. AAPSO distinguishes two categories of crimes: those committed by persons, individually and collectively; and those committed by organizations. Both have been the subject of impunity. Work remains to be done at the national and international levels to remove obstacles to investigations, and the task at hand will require collaboration between individuals, NGOs and governmental agencies.

10. AAPSO remains concerned about the impunity of international financial institutions, which are not held accountable for the negative impact of their policies on domestic economic and social conditions. Similarly, the imposition of effectively unilateral embargoes by large countries against smaller countries is identified as a related concern. The continued violation with impunity of the human rights of the Palestinian people, and the continued disregard for United Nations resolutions on the matter, was another flagrant case. Remaining problems included, as well, legislative and decreed pardons, the destruction of sensitive documents and archives, improper influences on tribunals, and manipulation of public opinion through misuse and censorship of the media. It was hoped that the establishment of the International Criminal Court would help to address these issues. Other useful measures, according to AAPSO, would include: a multi-level response (national, regional and international); and a revision of the agreements between the United Nations and the international financial institutions to allow oversight by the General Assembly.

11. By its letter of 18 November 1998, the United Nations Office of Drug Control and Crime Prevention noted the relevance of the recommendations of the Commission on Crime Prevention and Criminal Justice contained in the plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power annexed to Economic and Social Council resolution 1998/21 of 28 July 1998.